DOCUMENT RESUME

ED 155 128 SO 010 985

AUTHOR	Glass, Elsa Dik
TITLE	The Legal Status of Homemakers in the District of Columbia.
INSTITUTION	National Commission on the Observance of International Women's Year, Washington, D.C.
SPONS AGENCY	Center for Women Policy Studies, Washington, D.C.
PUB DATE	Jun 77
NOTE	52p.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 ($1.25, paper cover)
EDRS PRICE	MF-$0.83 HC-$3.50 Plus Postage.
DESCRIPTORS	Civil Rights Legislation; *Court Litigation; Credit (Finance); *Divorce; Equal Protection; Fatherless Family; *Feminism; *Housewives; Laws; *Marriage; Sex Discrimination; *Widowed

ABSTRACT

The document explores the legal status of the homemaker and the law in the District of Columbia, emphasizing those laws and judicial precedents that fail to give proper recognition to the value of the homemaker. The rights given to the homemaker under support, property, divorce, and inheritance laws are said to be the concrete measure of the homemaker's value to society. The booklet is arranged into three broad sections focusing on how the laws affect homemakers during marriage, widowhood, and divorce. The first section on marriage summarizes laws pertaining to the support of a wife, choice of domicile, a wife's disability and physical abuse, and credit laws. The second section on divorce and separation discusses property division, alimony, child custody, support, modification of divorce decree, enforcement, and government assistance in support collection. The last section on widowhood considers the situations in which the husband has died with or without leaving a will, considers the widow's property rights pension and social security funds, and estate tax laws. The document concludes with legislative recommendations and references. (Author/BC)

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THE LEGAL STATUS OF HOMEMAKERS IN DISTRICT OF COLUMBIA

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THE LEGAL STATUS OF HOMEMAKERS

IN THE DISTRICT OF COLUMBIA

PREPARED BY ELSA DIK GLASS

FOR THE

WOMEN'S LEGAL DEFENSE FUND

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This report was prepared under contract with the Center for Women Policy Studies, Washington, D.C., which commissioned an authority in each State to write a paper on the law of that State from the viewpoint of the homemaker. Opinions and points of view stated in this document are those of the authors and do not necessarily represent the official position or policies of any Federal agency, the National Commission on the Observance of International Women's Year, of its Homemaker's Committee, or of the Center for Women Policy Studies.

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This leaflet is based on the laws and judicial precedents in effect in the District of Columbia in April, 1977.

June 1977

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MESSAGE FROM MARTHA GRIFFITHS

Importance of Legal Status of Homemaker to All Women

The legal status of homemakers is of most direct importance to the minority of women whose husbands neglect to make a will or fail to be honorable and decent in their relationships with their wives and children, for these are the women who experience the effects of the law most directly. The legal status of homemakers, however, has great significance for all women, for the parents of daughters, and for the society at large.

The rights of homemakers under support laws, property laws, divorce laws, and inheritance laws are the concrete evidence of the value society places on the homemaker's role. If women's work is not valued in the home, it has a low value outside the home. If our daughters (and sons) cannot expect that their work in the home will be recognized as of equal value and deserving equal dignity with that of the spouse who works outside the home, the institution of the family and our society will suffer. The laws in most States are not grounded in this evaluation of the homemaker's role.

The laws under consideration in this leaflet apply to all wives (and in most cases to husbands) whether they work at home or outside the home. This paper, however, has been written from the viewpoint of the homemaker not employed outside the home, because she (or he) is the most vulnerable to economic inequalities.

Divorce Arrangements as an Indicator of Worth of Homemakers

Because divorce is usually the only way a wife can enforce support rights, property settlements at divorce, and awarding of alimony (or maintenance), and child support provide the best evidence of the worth ascribed to the homemaker in the law. With 1,000,000 divorces in 1975, the economic impact of divorce on women and children is important to the society.

Inadequacy of Present Data

There is very little information of any kind available on economic arrangements at divorce and none that can be analyzed State by State. All available data, however, point to the conclusion that alimony is granted in only a very small percentage of cases, that fathers, by and large, are contributing less than half the support of the children in divided families, and that the enforcement of alimony and child support awards is very inadequate.[1]

One 1972 nationwide study of 133 couples divorced since 1968 concluded, "Probably because children usually remain in the maternal family after a separation, the economic status of former husbands improves while that of the former wives deteriorates." This statement is based on the status after alimony and child support payments are made.[2]

A poll of 1,522 women conducted in September 1975 at the request of the National Commission indicated the same pattern with respect to relative economic status and also indicated that only 14 per cent of divorced wives are entitled to alimony by award of the courts or through a voluntary settlement approved by the courts. Of the 14 per cent, only 46 per cent collect it regularly.[3] Only 44 per cent of divorced mothers were awarded child support and 47 per cent were collecting regularly.

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1. Citizens' Advisory Council on the Status of Women, "The Equal Rights Amendment and Alimony and Child Support Laws", Department of Labor, Women's Bureau, Washington, D.C. 20210.

2. Duncan, Greg J. and Morgan, James N., editors, Five Thousand American Families - Patterns of Economic Progress, Vol. III, p. 185, Survey Research Center, Institute for Social Research, University of Michigan, Ann Arbor, Michigan 48106.

3. Poll of 1,522 women conducted in September 1975 by Market Opinion Research for the National Commission on the Observance of International Women's Year. A summary of the findings will be published by the Commission.

Women have never received alimony on a large scale. In 1922, the last year in which the U.S. Government collected national data, alimony was awarded or agreed to in 14.7 per cent of divorces. The proportions varied widely by State -- from 0.5 per cent in Pennsylvania and 0.7 per cent in Texas to 48.2 per cent in Wisconsin. In 1916 alimony was awarded in 15.3 per cent of divorces and was no higher in earlier years.4/

Collection of alimony and child support is clearly a problem of national proportions. At my request in 1974, as Chair of the Subcommittee on Fiscal Policy of the Joint Economic Committee, U.S. Congress, the General Accounting Office reviewed a sample of recipients of aid to families with dependent children in seven States and found that many fathers were not under any court order or voluntary agreement to pay child support; that the amounts supposed to be paid had little relationship to the father's ability to pay; and that less than one-half of the amounts due were being collected.5/

Effort of Committee to Gather Facts

The National Commission has recommended to the President that data be collected by the Bureau of the Census on economic arrangements at divorce, including the proportion of the support of children that is being contributed by each spouse and by the State through welfare programs. Part of the desired information is being collected in the 1976 Survey of Income and Education, and the Department of Health, Education, and Welfare plans to collect the remainder in 1976.

In addition, the National Commission, through its Committee on the Homemaker, is spending a large portion of its resources to secure these analyses by States, with examples, of how the laws affect homemakers during marriage, at widowhood, and at divorce. The Committee

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4. Bureau of the Census, Marriage and Divorce, 1922, Government Printing Office, Washington, D.C. 20401.

5. General Accounting Office, "New Child Support Legislation - Its Potential Impact and How to Improve it," Single copies available from Members of Congress.

contracted with the Center for Women Policy Studies for the preparation of this leaflet and similar leaflets for all other States and the District of Columbia.

Since the primary purpose of the Committee are to make recommendations for reform in areas where homemakers are inequitably treated, and to inform the public about little known aspects of domestic relations law, our papers in this series emphasize those laws and judicial precedents that fail to give proper recognition to the value of the homemaker and the welfare of children and those about which there is little general knowledge. The cases are chosen to illustrate these problems. The authors were asked to include any available statistical information or factual studies on the topics covered, but there seems to be even less available locally than is available nationally.

Recommendations of Committee

Based on these analyses of State laws and presentations by experts, the Committee on the Homemaker has proposed and the National Commission has endorsed several specific recommendations to improve the status of the homemaker and raised a number of questions for further study. The recommendations and questions are quoted following the discussion of State laws.

The Commission's Report "...To Form a More Perfect Union..." includes these and over 100 other recommendations with supportive information. Copies are available from the Government Printing Office, Washington, D.C. 20401.

I hope concerned readers will urge organizations interested in the status of women and preservation of the family to make detailed studies of the State laws covered in this leaflet and their application and of the recommendations of the Commission. Other publications that may be useful in such a study are listed on the last three pages of this leaflet.

Where permitted, "court watching" is an effective technique for learning how laws are actually applied in divorce cases, what changes are needed, and for sensitizing judges and other court personnel to the legitimate needs of dependent spouses (usually women) and children. It is easy for judges to over-emphasize

the needs of the chief wage earner (usually husbands) and fail to even think about how the wife and children will live on what is left over after his needs are met. Court watching may reveal that there are not enough judges and supporting staff to give adequate consideration to each case, or that the quality of judges and other staff needs to be improved.

Most importantly, those concerned with the status of women and the family should insist that State legislatures and the U.S. Government give a high priority to the revisions in State and Federal law needed to recognize the homemaker's role as having equal value and deserving equal dignity with that of the spouse who works outside the home.

Martha Griffiths

Martha Griffiths, Chair
Committee on the Homemaker

INTRODUCTION

This report explores the status of the homemaker and the law in the District of Columbia. Since the majority of women marry, the legal rights that affect women who marry are important to all women whether they choose to be homemakers or to work outside the home. Traditionally, marriage is viewed by women as a secure and happy experience; unfortunately, whether this works out for the individual woman or not, her legal status in the District is such that she might well be better off financially if she remained single.

The old common law idea of marriage was that a man and woman become one in the person of the man. A married woman could not own property, make a contract, or sue in her own name.[1]

Legislatures attempted to correct this anomaly with the passage of the Married Women's Acts, which established the individuality of the parties, allowing wives to sue "...separately for the security, recovery or protection of their property and for torts committed against them as fully as if they were single."[2] A married woman's separately held property is no longer liable for her husband's debts,[3] and she is free to engage in business on her own account.[4] In spite of these changes, inequities remain, and the woman who chooses to be a full-time homemaker is often the most seriously affected.

MARRIAGE

The "Right" to Support

Many women choose to become full-time homemakers, believing that they can rely on their husbands to support them, and that the law will guarantee this expectation. In fact, a woman who remains at home to look after the house and children may have great difficulty enforcing the theoretical obligation of her husband to provide for his family.

A woman has, since passage of the Married Women's Act, been liable for her own separate debt.[5] However, a

husband is theoretically liable for his wife's debts or contracts incurred for necessaries or as his agent.[6] It is up to the court to judge the reasonableness of necessaries furnished to a wife, and the court is supposed to take into consideration the financial position of the husband.[7] Problems arise, nonetheless, for the woman who attempts to secure necessaries on her husband's credit.

Creditors realize that the husband can avoid paying for items supplied to the wife unless they can prove that the wife has express or apparent authority to pledge her husband's credit, or they can prove that the husband neglects, fails, or refuses to furnish something his family needs.[8]

One court noted that where the husband cuts off his wife's power to pledge his credit, by giving notice to stores where they have had accounts, "she would simply be trying to sell a lawsuit to grocers and others"[9] when she tried to get necessaries from them. It is not enough if the creditor proves that the husband has failed in general to support his family: the rule is that "the husband's obligation arises when he has neglected or failed to provide the particular necessaries which the third party has in fact supplied."[10] Stores do not want this burden of proof.

The D.C. Code used to make nonsupport a crime, if the wife was "destitute" and could show that her husband could, if he chose to, support.[11] There were no reported cases wherein that section was enforced where the parties were living together, however, and it has been repealed.[12]

The courts are reluctant to intervene in an on-going marriage to assure that a woman is being adequately supported. Although the wife need not move out of the home in order to be awarded separate maintenance, she must show that she and her husband have abandoned the relation of husband and wife in all but the most technical legal sense.[13] The parties must at least be occupying separate bedrooms and maintaining separate lives before a wife is entitled to any portion of her husband's income for her own use.[14] In other words, unless a woman is willing effectively to end her marriage, she has no means of requiring her husband to support her.

Domicile

One right that a woman may lose upon her marriage is the right to choose where she will live. The husband has the right to choose the place where the family will reside, and if he acts reasonably the wife's unjustified refusal to follow him constitutes constructive desertion on her part which if it persists is a ground for divorce.[15]

A man may therefore decide to move the family, without even consulting his wife, and, provided he is acting reasonably, she is obliged to go with him or face the possibility of divorce.

Credit

Serious problems for married woman, divorcees, and widows have arisen from the fact that credit accounts, even joint accounts, have been customarily carried in the husband's name by creditors and consumer reporting agencies. Thus when a wife, widow, or divorcee with her own property or independent income, applies for credit in her own name, her application may be denied because she has no credit history of her own. Some creditors will not take the risk of extending credit to someone, who according to all records available, does not have a history of satisfactory payment.

Regulation B, issued by the Federal Reserve Board to implement the Federal Equal Credit Opportunity Act, attempts to remedy the situation. The regulation provides that after June 1, 1977, creditors must determine as to each new account whether both spouses will be contractually liable, or whether the applicant's spouse will be permitted to use the account (if the account is for open end credit). If the answer is yes, the creditor must report the account to the credit bureau in a manner which will reflect the participation of both spouses. For accounts already in existence on June 1, the regulation requires that creditors must determine from a review of their files whether an account is one which should reflect the participation

of both spouses. Alternatively, the creditor must mail a notice to all account holders, notifying them of the right to have the credit information so reported.

In requiring credit designation and credit reporting in this manner, even when the wife is not contractually liable, the Board recognized that often a homemaker who uses an open end account will play a significant role in maintaining the account--by making the monthly payments or by budgeting income and expenditures. Thus, the payment history may be as much a product of her contribution as that of the wage-earning husband.

The Equal Credit Opportunity Act and Regulation B provide other protections against discrimination on the basis of sex or marital status. Information may be obtained from the Office of Saver and Consumer Affairs, Federal Reserve Board, Washington, D.C. 20551.

Even under the new Equal Credit Opportunity Act, which benefits the family with a salaried wife, the dependent homemaker is not guaranteed credit without the consent of the husband. This seems particularly unfair when a husband would have to pay approximately $12,000 a year to duplicate the services that the homemaker provides.

Disability

A homemaker is almost unique in our society in that she alone is not covered by some sort of insurance, either private or through social security, for disabilities which may keep her from performing her job. If a husband becomes disabled, social security or private insurance will almost always replace all or part of his wages. But, if a homemaker becomes disabled, she and her family will find themselves in a very difficult position: a full-time housekeeper will cost a minimum of $400 per month. Today, homemakers and their families find it very difficult and/or very expensive to insure themselves against this risk.

Physical Abuse

Some married women suffer worse hardship than denial of credit. Many women, including middle and upperclass women, are admitting that their husbands beat, rape, and threaten them with death. Can they find help through the court system?

The Married Women's Act requires that women be treated as individuals in their relationships with other people. However, within marriage, their status appears to be unchanged. The Supreme Court has said: "the Married Women's Acts were not intended to give the right of action to the wife against the husband, but only to allow the wife in her own name to bring actions which at common law would have had to brought under the joint names of husband and wife."[16]

The husband in that case had assaulted his wife on several occasions while she was pregnant, which he knew. The Supreme Court suggested that the wife had a remedy for such wrongs in "resort to the criminal courts," and that she could sue for divorce or separation and alimony for redress of her wrongs.[17]

Although a 1946 case suggested that this rule might no longer be applied,[18] the rule was upheld by the Supreme Court in a 1965 case in which a wife tried to sue her husband for severe injuries allegedly sustained in a car accident caused by his negligence.[19] The parties had at the time been separated for over three years, and they were together only to discuss problems concerning their children, so, as a dissenting lower court judge remarked, it was hard to see how there was any family harmony to be preserved by applying the rule.[20] The court suggested that "Any change in this long-established doctrine should be accomplished by Congressional enactment." No subsequent case has modified the rule.

The wife may have little hope for relief even by resorting to criminal prosecution. Whether the woman has her husband prosecuted criminally, or whether she gets a civil

protection order, so that her husband will be in contempt of court if he abuses her again, she faces the possibility of being without any income if he is sent to jail.

If divorce is an adequate remedy for domestic discord, as suggested by the Supreme Court, then the following cases illustrate that even when "atrocious wrongs" seem apparent, the picture for separate maintenance or alimony may be bleak. Therefore, the very real possibility of inadequate support may well encourage an abused wife to continue the marriage, especially when she has children and no assets or marketable skills. The ignominy of physical abuse appears not to impress the courts. In a 1966 case it was held that a wife is unjustified in leaving the home when her husband slaps her, as long as it occurs infrequently![21] Separate maintenance has been refused to the wife on the ground that a little physical abuse is no excuse for leaving the home and that her desertion is a bar to a claim for separate maintenance.[22] Given these rulings, there is little hope that the courts will consider without prejudice a rape by the husband.

The D.C. Statute defines rape as carnal knowledge of a female forcibly and against her will, or "carnal knowledge and abuse of a female child under the age of 16."[23] Under the common law, however, a woman gives consent to marital relations with her husband which cannot be retracted while the marriage is legally intact, even though the parties are living separate and apart and even if one has filed for divorce.

DIVORCE AND SEPARATION

The District of Columbia recently amended its law to provide that a divorce may be granted where the parties have been voluntarily separated for 6 months or where they have been separated for 1 year even though one spouse may not have consented to the separation. A legal separation may be decreed where the parties are voluntarily living apart or have lived apart for one year, even if one spouse did not consent; for adultery; or for cruelty.[24]

Divorce is often sought as a remedy for an unsatisfactory marriage; even when there are grounds for it, however, many problems occur.

Property Division

The state of the law in the District of Columbia in reference to family support and division of property is so vague that it creates a situation in which a woman may be without financial protection if her husband refuses to provide support. The D.C. Code leaves to the discretion of the court the decision about the appropriateness of a grant of alimony, and the determination of the amount.[25] The recently amended Code provides that, upon divorce or annulment, unless the parties have made a valid agreement concerning their respective property rights, the court may distribute as it deems just all property acquired during the marriage (other than by gift, bequest, etc.), whether the property is held in the name of both parties or one.[26] The broad power this leaves the court should be contrasted with the rule in other jurisdictions, such as Maryland, where placing the property in joint names generally creates a gift of a one-half interest to the nonpaying spouse.[27]

In D.C., under the amended law, some factors to be considered by the court in distributing property accumulated during the marriage are "the duration of the marriage, any prior marriage of either party, the age, health, occupation, amount and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties, provisions for the custody of minor children, whether the distribution is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of assets and income," as well as "each party's contribution as a homemaker or to the family unit."[28] (Emphasis supplied)

It remains to be seen how the law will be applied by the courts but, if it is fairly administered, it will improve the status of women, especially those who are full-time homemakers. Since the weight to be given to each of these

factors is not prescribed, however, a woman's financial future lies in the discretion of the trial court judge, and the trial court's determination will not ordinarily be upset on appeal unless the trial record manifests an abuse of discretion.[29]

In cases involving division of property, judges have up to now appeared to consider only the actual financial contributions that the wife has made toward its acquisition; any contribution made through household maintenance was often ignored.[30] Under its general equity power, the court has had the discretion to divide property held solely in the name of one spouse.[31] However, if the property is only in the husband's name, the wife's contribution toward household maintenance has been considered inadequate to create a right of ownership.[32]

In one case, a couple owned a home and a small office building as tenants by the entirety; during the marriage the husband also bought some land in his own name. The appeals court upheld the trial court's award of the home to the wife and office to the husband, but held that "sporadic clerical services" performed for her husband when he began his architecture practice were an insufficient contribution to give her any interest in the land. The wife's contribution to household management did not entitle her to a share of property held in the husband's name.[33] In another case,[34] the court held that "where real property is purchased entirely by one spouse and title is taken in the names of both as tenants-by-entirety, the consideration to be implied for the share of the non-purchasing spouse is the faithful performance of his or her marriage vows." The court upheld the trial court's award to the husband of sole ownership of the home, noting that the wife tried to "boss" and that the husband paid the purchase, upkeep, and maintenance costs.

The wife's performance is scrutinized carefully. However, this may give her no material advantages in a divorce proceeding - in fact, it may work to her detriment. The wife might not improve her own situation by economizing in managing the home during marriage. In Hardy v. Hardy,

the wife discharged the maid, took over her work, and used money saved from her household allowance to buy securities in her own name. After 22 years of marriage the husband sued for divorce and sued for the stocks and bonds she had purchased. She contended that there was an understanding that she should keep what she saved as long as she continued the necessary operations of the house, but the court held him entitled to the whole portfolio, less the amount of an inheritance and some Victory Bonds she had invested. The court said that the husband gave her money for food and entertainment, not for stocks, and added, "to hold otherwise would be to invite disruptive influences in the home."[35]

Even the number of years spent in marriage may not give the wife preferential status in dividing the property. Where a wife and children left home after a marriage of 22 years because of the husband's behavior, the court awarded the wife a divorce on the ground of desertion, but awarded the husband title to the jointly-held family home.[36] On the other hand, when another husband, after 24 years of marriage, deserted his wife for three months and then returned, and five months later the wife left, alleging acts of cruelty, the court found that she had deserted. The fact that the couple "resumed intercourse" after his return constituted condonation by the wife, rendering earlier history irrelevant, and allowing the husband exclusive title to the home.[37] Even where a wife is justified in leaving her husband, if he makes, in good faith, an offer to resume marital relations, the wife must accept or forfeit her right to separate maintenance.[38]

The courts have not been changing their perspective, even when women are gainfully employed and financially contributing to the household. In a recent case,[39] a woman claimed alimony not on the basis of present need, but as recompense for financial contributions to the household during the marriage. The court excluded evidence of these contributions because it was sought to be introduced on the issue of the wife's entitlement to the husband's interest in a house in the State of Washington which appeared to be in

the husband's name, and "alimony cannot be used as a device to divide a husband's property in a divorce action." The court made no decision concerning disposition of that property, but it denied the wife any alimony. In an effort to understand possible biases of the court, it is interesting to note that the wife in that case was a doctor of psychology.

Given decisions such as those described, and given the still prevailing double standard, it should come as no surprise that the wife who has erred may have little hope of receiving her interest in the property.[40] In another recent case, the husband's adulterous relationship was condoned but the wife's was not.[41] Therefore, jointly owned property was awarded to the husband although the wife contributed to its purchase and was gainfully employed throughout the marriage.

Sometimes the parties decide to draw up their own property settlement agreement. The D.C. Code and the courts favor such settlements on the theory that the parties can best settle their own affairs. Voluntary separation agreements will be enforced in the absence of fraud, duress, concealment, or overreaching. The one who asserts the invalidity of a separation agreement, however, has the burden of proving that it was obtained by fraud, duress, or illegal concealment, unless the agreement is unfair and unreasonable on its face. However, few homemakers are experienced business women, few women are aware of their rights and vested interests, and many may even be ignorant of the family financial situation and unaware of how difficult it is to prove fraud, duress, or illegal concealment. Further, many may not have the means to obtain expert advice for themselves in drafting a settlement, or to realize how important it is.

In Davis v. Davis,[42] the parties had been married for five years and had one child. They shared an attorney who merely reduced the provisions of their agreement to writing. The couple divided their real and personal property; the wife waived permanent alimony, accepting

$250 a month for a year and $150 a month child support, which would be reduced to 50 a month if she remarried. At the time they made the separation agreement, the wife did not want the husband to support the child if she remarried. When the wife, who was a college graduate, could not find a job in a year, she claimed that the husband was overreaching and had taken advantage of her. The court held that their agreement had finally settled all property rights and claims between them.

Alimony and Child Support

Theoretically, the wife who is separated from her husband is entitled to maintenance in a manner which the parties' station in life makes appropriate, not just basic subsistence.[43] In actual practice, the wife may well not receive enough for expenses for herself and her children.[44]

In one case, a couple was separated after 31 years of marriage. The wife was gainfully employed, with a net income of $831 a month and expenses of $1,400 a month. Although the husband, an M.D., had a gross income of $18,000 a year, the wife was awarded only $300 a month, leaving her almost $300 short of meeting her expenses.[45]

In another case,[46] the wife was awarded custody of her three minor children and $1,350 a month for separate maintenance and child support. But the husband, a prominent attorney, had a net worth of more than $300,000, an income of $30,000 to $60,000 a year, extensive land holdings, and more than $3,000 in several bank accounts. The wife testified that in 1970 and 1971 she was given $2,300 a month for household expenses, mortgage payments, food, clothing, medical expenses, and the children's tuition. Testimony in regard to her present needs was not questioned, but her final settlement remained $1,000 a month less than her expenses. The court, in another case,[47] after considering the 14-year marriage, the parties' standard of living based on the husband's yearly income of $67,000 as a physician, the future earning capacity of each, the wife's medical problems, and her inability to hold a job

under stressful conditions, awarded her $10,800 a year, on which she would have to pay income tax. The husband was left with an income of $56,200 per year.

The wife may not be granted separate maintenance, or may be granted a lesser amount than she otherwise would get, if the trial judge concludes that the separation is her fault;[48] she must present evidence reflecting definite need for funds to defray such necessary expenses as real estate taxes, automobile insurance, and hospital insurance.[49]

While a wife may lose alimony as a result of her misconduct, the courts specifically reject using alimony to penalize a man for his misconduct.[50] In determining the amount of alimony to award, the courts have considered the duration of the marriage, the ages and health of the parties, their respective financial positions, both past and prospective, the wife's contribution to the family support and ownership, needs of the wife and the husband's ability to pay, and the interest of society in preventing her from becoming a public charge.[51] Note again that the contribution of a homemaker has not been included among the factors listed.

On the other hand the D.C. courts frequently overturn alimony awards if the trial court fails to consider the husband's ability to pay. In a 1973 case,[52] the wife learned that the husband can have considerable control over his ability to pay. In that case, it was held that the trial court erred in awarding the wife $535 a month alimony and child support because the court did not first determine the husband's monthly income. The record showed the husband's gross income was $16,000 a year, that he owed $8,000 ($410 a month) to local creditors, and that he had no income other than his salary. The wife argued that the husband was escaping his obligations to support his family by spending himself into debt, pointing out that the debt had been largely incurred since the marriage ended. The husband had recently bought a new car and had spent $3,500-$4,000 on furni-

ture for his apartment. The court was not impressed: "Certainly...husbands (may not) defeat their marital obligations merely by spending themselves into debt. On the other hand, there is nothing in the record to show either that these debts may now be voided, or that these creditors are willing to forego payment of these debts."

Modification of Decree

The law attempts to prevent inequities by allowing alimony and child support awards to be modified by the court when a change occurs in the financial circumstances of the parties. Even this protection is often not enough to ease the wife's financial burdens. In Crain v. Crain,[53] the court noted that the wife had received custody of three minor children with a support and maintenance allowance of $646 a month. One of the children suffered from mental retardation and epilepsy, and required special care. The child was enrolled in a residential rehabilitation center for children with mental and emotional problems. Noting that the husband's salary had substantially increased to over $47,000 a year, that the wife had been assessed for about $1,650 in back taxes, and that her ability to pay for her child's treatment had been severely restricted, the court raised the payments to $900 a month, or $10,080 a year. The husband still had $36,000 a year for his own support

Another serious obstacle facing the homemaker who seeks a divorce or modification of a maintenance or support decree is the possibly heavy expense of bringing suit. The cost may exceed the relief granted, especially where the husband's income is low or moderate. If the wife does not have access to free or low-cost legal assistance, she must hope that the court will exercise its discretion and award her counsel fees.[54] Often, the court does not exercise this discretion, leaving the wife in a worse state than before. In one case,[55] the trial court refused to award counsel fees to a divorced woman on her motion for increased maintenance and support. The court awarded a $5 biweekly cost-of-

living increase, less than the legal fees accrued in seeking the award. The wife's victory was a hollow one. In determining whether to award counsel fees to the wife in divorce or support actions, the courts will consider such factors as the quality and nature of the services, their necessity, the results obtained and the husband's ability to pay, including the husband's ability to alter his financial situation by incurring debts or by assuming new marital responsibilities.

Enforcement

If the court does find that a woman is entitled to support and/or property, she still may find herself without funds. In spite of various actions intended to assure that court-ordered support is paid, it often is not.[56] Each month over the past year, from 25 to 67 motions of contempt were filed in the District of Columbia for nonpayment of child support, alimony, or property settlement--approximately 580 cases for the year. This figure includes only cases arising from divorce actions originating in this jurisdiction. Almost 25 percent of these cases involved divorces originally filed for in 1973, and over 80 percent were from divorce applications filed since 1969.[57]

In each of the past two years, the D.C. courts have granted approximately 3,000 divorces. When the previous figures are juxtaposed against this statistic it appears that, in D.C., nearly one in five people who are granted a divorce must return to court, usually within one to three years, to ask for enforcement of the original court order. Of the 580 contempt motions filed each year there may be a few repeated motions involving the same people. However, these are undoubtedly more than offset by those who were either never awarded support or who do not choose to go to court for enforcement. After repeated attempts to remedy the forfeiture, total discouragement usually sets in, and the women stop trying to collect what has been awarded them.

Under the amended D.C. Marriage and Divorce Act a wife may perhaps be more certain of collecting court-ordered payments from the husband, because the court may now order a spouse who is in arrears to make an assignment of part of his or her salary, wages, earnings, or other income to the person entitled to receive the payments.[58]

The new law also restricts the court's previously unfettered discretion in awarding custody of a child. The court must now first determine the best interest of the child by considering a number of factors including the interrelationship and interaction of the child with his or her home, school and community, and the mental and physical health of the parties.[59]

Role of Federal Government in Collecting Support

The Federal Government has stepped in to aid in collection of child support, and in some cases alimony. Concerned about the effects on welfare costs of the failure to collect support payments, the Congress in late 1974 amended the Social Security Act to strengthen collection of child support payments both for families on Aid to Families with Dependent Children and other families (Public Law 93-647). The law also authorized garnishment of Federal wages, pensions, and other remuneration of persons defaulting on alimony or child support payments.

The child support collection program, usually referred to as the "IV-D" program, provided financial penalties for States unless they established by January 1, 1977 an efficiently operating unit to help in collecting child support payments for all families. The units are to establish paternity, secure court orders for child support, locate defaulting parents, and collect the payments. A charge is made for collecting for families

not on welfare. The Federal Government was directed to establish a parent locator service to help in finding defaulting parents, and it is now in operation.

The new program is not yet operating effectively in all States. Women in the District of Columbia needing the help of the unit should write or call:

Office of Paternity and Child Support
Enforcement
Department of Human Resources
Room 420 - District Building
1350 E Street, N.W.
Washington, D.C. 20004
Phone (202) 638-1031

Women concerned about this problem should monitor the performance of the Support Enforcement Services and see to it that mothers on welfare are justly treated and protected from harassment and that the collection of support for families not on welfare is included in the program as intended by the Congress.

Questions concerning the national aspects of the program can be addressed to:

Office of Child Support
Department of Health, Education,
and Welfare
Washington, D.C. 20201
Phone (202) 245-8717 or 245-1943

or to your representative in the Congress.

The new law also authorizes garnishment of salaries and pensions of Federal employees, including military personnel who have defaulted on alimony or child support payments and provides for garnishment of Social Security benefits paid to the person on whose employment they are based.

The U.S. Civil Service Commission has been directed by the President (Executive Order No. 11881) to prescribe regulations for implementing the garnishment provision. Information on the regulation can be secured from:

Office of Public Affairs
U.S. Civil Service Commission
Washington, D.C. 20415
Phone (202) 632-4588

or by writing your representative in the Congress.

WIDOWHOOD

Even without problems during marriage, a woman of any age may find herself with serious, unexpected financial problems upon her husband's death. In addition to the emotional strain and trauma of death, it may be necessary for her to do some fast learning about the legal aspects of acquiring the share of her husband's property to which she is entitled. In Washington, D.C., there are three alternative ways in which a widow may elect her share of her deceased husband's estate. Each of the three options, however, has possible advantages and pitfalls of which every woman should be aware.

If There is a Will

If her husband has died testate; that is, with a will, the surviving spouse is entitled to the benefit of all of the provisions in the will.[60] If her husband has been generous, she may have been left a substantial amount, although she may have to pay inheritance taxes, even though she might have been responsible for acquiring a good part of the property. On the other hand, many women have been practically cut out of the will altogether or given a disproportionately lesser amount than other, perhaps more favored, relatives. There is also the possibility that the husband purposely conveyed his property to a third person prior to his death to avoid his marital obligations. If he deliberately tried to disinherit her,

the law will protect the woman's interest, but the burden of proving the fraud is upon her.[61] This task may prove very difficult, especially if there has been a seemingly valid sale, the other party involved is uncooperative, and the wife is left with some means of support.

In any event, it is important for every woman to know that she has options regarding her rights to her husband's estate. The District has enacted a law that entitles a woman to renounce the will and receive a common law share (to be discussed below) of her husband's estate instead.[62] The critical factor here, however, is that this renunciation must be written and filed in a court within six months after the will was probated or the widow waives her right of election. In one case,[63] the husband's will left his wife one-third of the proceeds of his real estate and personal property for her life only. Because the husband in fact owned no land by the time he died, the widow orally declared her intention to renounce the will. The court held, that even though the will did not offer the wife the equivalent of her legal share in her husband's estate, she still had to file the formal, written renunciation with the court, which she neglected to do. Some states explicitly require the court to explain the alternatives to a widow upon probate of the will,[64] and others require her actual acquiescence to the provisions of the will.[65] D.C. regards a widow's often confused and ill-informed silence as irrevocable acceptance of the will once the six-month period is over. "[The other] statutes reflect greater and more scrupulous regard for the rights of widows than does the [D.C.] statute which imposes upon them the burden of acting affirmatively to protect themselves."[66] The freedom to choose can be illusory, then, unless a woman takes positive action to ascertain the consequences of her inaction.

<u>If There is No Will</u>

Should the wife decide to renounce her husband's will, or should her husband die intestate (without leaving a

will), a widow is entitled to a legal share of her husband's estate. Only if there are virtually no living relatives is the wife entitled to the whole estate.[67] If there is a living brother, sister, niece, nephew, or parent, the wife is then entitled to one-half of the property;[68] if there are any children or grandchildren, she is entitled to one-third.[69]

The significant disadvantage in claiming a legal share, however, is that the estate is liable for payment of the funeral costs, costs of administration, debts, and taxes. If the husband's personal wealth is insufficient to cover these costs, the real estate is liable, and the consent of the wife is not needed for the court to sell it.[70] Thus, if the husband has incurred substantial debts, and there are adult or nearly adult children living, the wife may be left with one-third of practically nothing.

Dower

The third alternative open to a widow is to claim her right to dower. This entitles her to use of one-third (or one-half if there are no children) of all the land acquired by the deceased during marriage.[71] Based upon a historical emphasis on real property, however, this interest involves only the land owned by the husband and not his personal property, monetary savings, and other investments.

There are several aspects of the dower interest of which a widow should be aware. One of these is that it is only a life estate, which means that upon her death the entire interest will revert to the husband's heirs. Therefore, the right of dower may be worth very little. In addition, the law holds that any woman who is convicted of adultery forfeits her right to dower and is forever barred to demand it.[72]

The case of Devlin v. Esher,[73] exemplifies other possible problems surrounding a wife's right to dower. The husband owned some land with several others as tenants in

common, and they decided to sell the land and divide the proceeds among them. The wife asserted that she was entitled to dower in her husband's share of the proceedings, but the court did not agree. They held that the husband's present right to partition the land and spend the proceeds was paramount to his wife's future interest in the land, so that she lost all claim to the land sold although she did not consent to its sale. "Dower is not a natural right -- it is wholly given by law and the power that gave it may increase, diminish, or otherwise alter it, or wholly take it away.[74] The right to dower is obviously, at best, insecure.

There are cases, however, in which a woman would be wise to elect her dower interest. If a woman were young and her husband had owned some land but left her very little in his will (or no will at all) and he had substantial, outstanding debts, then her dower interest would be the most protected, because debts cannot defeat dower. A court may not sell the land which a widow acquired through dower upon her husband's death to pay his debts or costs. Again, however, the wife must act within six months to renounce her legal share or she will be barred of her dower rights.[75]

In addition to whatever share a widow takes by will, dower or by intestate succession, she may also be entitled to a living allowance of up to $2,500 to use during the time the estate is being settled. That sum is exempt from all debts and obligations of the estate except for funeral expenses.[76]

It should be clear, that despite the law's claim that a widow has a right to be provided for and have maintenance and sustenance out of her husband's estate,[77] the law does not always work in the woman's best interest. A widow must act quickly to ascertain exactly what she is entitled to under her various options in inheritance and succession, so that she will not lose out on what is rightfully hers. It is unfortunate that the legal

system places this burden on the woman, who is often quite unfamiliar with her husband's financial affairs, at a time when she has a great deal else with which to cope.

Pensions and Social Security

A wife whose husband is covered by one of the pension plans provided by many employers may be entitled to a "survivor's annuity" on the death of her husband. Since passage of ERISA (Employees Retirement Income Security Act) by Congress in 1974 it is required that pension and retirement plans offer "survivor annuities."[78] A worker may, however, choose not to cover his or her spouse and the law does not require that the spouse be informed of this action.

It should be noted also that survivor annuities generally apply to the pension benefits of retired workers. If a woman is widowed before her husband retires, even if he was due to receive a benefit and had allowed for survivor coverage, she would probably be ineligible for pension benefits.

Under ERISA divorced spouses may also be precluded from receiving survivors' benefits if they are not married to the retired worker for the year prior to death.[79] Requirements to receive survivor benefits are made even more conditional by the proposed Internal Revenue Service regulations under ERISA, which allow pension plans not only to require marriage for the year prior to death, but allow plans to require marriage at the annuity starting date.[80]

A wife whose husband is covered by social security is entitled under certain conditions to a benefit based on his employment record when he retires, dies or becomes disabled. A wife divorced prior to 20 consecutive years of marriage loses all eligibility for such benefits, unless he dies and she has children in her care who are entitled to a benefit based on his employment.

Even if she is divorced after 20 or more years of marriage, she would not be eligible for a benefit until he retired, was disabled or died. She would lose eligibility to her ex-husband's account on re-marriage.

Estate Tax

Current Federal law imposes an estate tax which must be paid when a person dies leaving property to persons or entities other than the government or charities. This tax is applicable when a husband leaves property to his wife, even jointly held property. It is ironic, and some believe very unfair, that the Federal tax applies and must be paid by a surviving spouse when the deceased spouse leaves everything to his/her marriage partner, but there is no tax due if the property is left to a governmental agency or to a charity.

The Tax Reform Act of 1976, which was signed into law on October 4, 1976, did not follow the International Women's Year Commission and Department of Treasury recommendations to eliminate taxation on all transfers of property between husband and wife at death and on all gifts between husband and wife during their lifetimes. Nor was the law revised to stipulate that the wife owned half of the estate because her contribution at home was considered an equivalent contribution. However, the law was revised and liberalized with the result that fewer estates will be subject to tax. The law raised the marital deduction and allows the surviving spouse to inherit without tax, $250,000 or half of the estate, whichever is greater. In addition, a new tax credit which is equivalent to an exemption of $120,667 is allowed. This exemption increases each year until 1981. Thus the marital deduction coupled with the tax credit exempts estates from taxation in 1977 up to $370,667, increasing to $425,625 in 1981.

However, in non-community property States where large estates of farms or businesses are concerned, many wives will still have to pay a tax when a husband

would not. Particularly hard hit are farm wives who inherit large tracts of land which they may have co-owned and worked for for many years. If the market value of the land is high, they frequently must sell at least part of the property to meet estate taxes. Under current law, the gross estate of a decedent includes the entire value of property held jointly by a husband and wife except to the extent that the surviving spouse establishes that the money to pay for the property was furnished by such survivor. This means that in most cases a man can prove that he has paid for joint property and a woman, because her work in the home has not been given economic value, cannot. Therefore, a wife, after taking whatever deductions allowable, may in fact owe tax on some amount of the estate whereas a husband would not.

To partially offset this discrepancy in the law, the Tax Reform Act does allow the husband to "give" his wife a gift of half of the jointly held property (subject to gift tax after the first $100,000). This would mean that for estate tax purposes, property would be treated as belonging 50% to each spouse. Thus each spouse would be subject to the estate tax in the same manner, in accordance with estate tax law.

It is important to note that this provision requires that one spouse "give" half of the real property in an estate to the other spouse as a gift. The law does not assume that the work done in the home has economic worth.

CONCLUSION

From the picture cast by the cases, the court decisions, and the current laws, it appears that the law does not, in fact, guarantee a livelihood for homemakers while married, divorced, or widowed. It is, therefore, important for a young woman to learn that she must be prepared to take care of herself throughout her life without financial dependence on anyone. Meanwhile, law reform is needed in the District of Columbia to assure that women who have invested a significant part of their lives in homemaking are supported adequately by their husbands.

NOTE ABOUT THE AUTHOR

Elsa Dik Glass is presently in private practice in Washington, D.C. She received her undergraduate and law degrees from George Washington University and has been a member of the D.C. Bar since 1966.

The Women's Legal Defense Fund is a non-profit, tax-exempt corporation organized in 1971 to secure equal rights for women by providing volunteer legal representation as well as sponsoring informational and educational activities on legal issues of special interest to women. The group is based in Washington, D.C.

The Women's Legal Defense Fund litigates sex discrimination cases (charging no attorney's fees), and counsels women in Credit Discrimination, Name Change/Retention, Employment Discrimination, and Domestic Relations Law. The Fund established this year a Task Force on Abused Women. Publications of the organization include. a Credit Discrimination manual, a Name Change Discrimination manual, one on Employment Discrimination, and the most recent, Domestic Relations Law for Washington Area Women. For further information on the Women's Legal Defense Fund write, 1424 16th Street, N.W., Washington, D.C. 20036, or call 202-232-7072.

APPENDIX

Month	Approximate Number of contempt actions filed
August '74	51
September	47
October	54
November	43
December	25
January '75	67
February	44
March	44
April	59
May	47
June	45
July	54
Total	580

Date filed for divorce Date filed for Divorce	Number of contempt actions filed 8/1/74-7/31/75
1975	11
1974	97
1973	132
1972	80
1971	57
1970	56
1969	49
1968	20
1967	20
1966	19
1965	13
1964	9
1963	4
1962	3
1961	4
1960	4

FOOTNOTES

1. L. Kanowitz, Women and the Law - The Unfinished Revolution (1969) at p. 36.

2. D.C. Code § 1155 (1901).

3. D.C. Code Ann. § 30-207 (1973).

4. D.C. Code Ann. § 30-208 (1973).

5. Ibid.

6. D.C. Code Ann. § 30-211 (1973).

7. Stein v. Woodward & Lothrop, 77 A. 2d 564 (D.C. Mun. App. 1950).

8. Hollywood Credit Clothing v. Laredo, 144 A. 2d 271 (D.C. Mun. App. 1958).

9. Pederson v. Pederson, 107 F. 2d 227, 231, 71 App. D.C. 26, 30 (D.C. Cir. 1939).

10. Cromwell v. Anderson Furniture, 195 A. 2d 264 (D.C. C.A. 1963).

11. D.C. Code Ann. § 22-903.

12. July 29, 1970, Pub. L. 91-358, § 165 (a)(b), title I, 84 Stat. 586.

13. Pederson v. Pederson, supra, footnote 9.

14. Lutz v. Lutz, 166 A. 2d 489 (D.C. Mun. App. 1960), rehearing denied ibid. (1961).

15. Busboom v. Busboom, 187 A. 2d 122 (D.C. Mun. App. 1962); Glick v. Glick, 187 A. 2d 893 (D.C.C.A. 1963).

16. Thompson v. Thompson, 31 App. D.C. 557 (D.C. Cir. 1908), aff'd, 218 U.S. 611 (1910).

17. Ibid.

18. Steele v. Steele, 65 F. Supp. 329 (D.D.C. 1946). The court thought that the Thompson rule was inconsistent with the established rule that the husband may be liable criminally for an assault on the wife, and believed that "recourse to criminal prosecution is apt to be as disturbing to the family tranquility as resort to a civil action for damages."

19. Mountjoy v. Mountjoy, 206 A. 2d 733 (D.C.C.A.), appeal dismissed and petition for reconsideration en banc denied, U.S. App. D.C. 27, 347 F. 2d 811, cert. denied, 382 U.S. 910 (1965).

20. Ibid., U.S. App. D.C. 27, 28, 347 F. 2d 811, 812, per J. Skelly Wright, C.J.

21. Hannon v. Hannon, 220 A. 2d 94 (D.C.C.A. 1966).

22. Roberson v. Roberson, 297 A. 2d 769 (D.C.C.A. 1972).

23. D.C. Code Ann. § 22-2801 (1973).

24. D.C. Code Ann. § 16-904 (1973), as amended.

25. D.C. Code Ann. § 16-912 (1973).

26. D.C. Code § 16-910 (1973), as amended.

27. Hardy v. Hardy, 250 F. Supp. 956 (D.D.C. 1966). Deserting wife retains interest in house in Maryland bought by husband but held by both as tenants by entireties.

28. D.C. Code § 16-910 (1973), as amended.

29. Quarles v. Quarles, 179 F. 2d 57, 86 U.S. App. D.C. 41 (D.C. Cir. 1949).

30. Mazique v. Mazique, 206 A. 2d 557 (D.C.C.A. 1965), aff'd on other grounds, 356 F. 2d 801 (D.C. Cir.),

cert. denied, 384 U.S. 981 (1966). (Wife who worked while husband was in medical school gets no interest in property after 24 years of marriage); Lundregan v. Lundregan, 176 A. 2d 790 (D.C. Mun. App. 1962) (Deserting husband gets real estate; wife still liable on mortgage).

31. Mumma v. Mumma, 280 A. 2d 73 (D.C.C.A. 1971), aff'd. 295 A. 2d 898 (D.C.C.A. 1972).

32. Wheeler v. Wheeler, 188 F. 2d 31 (D.C. Cir. 1951).

33. Mumma v. Mumma, supra, footnote 30.

34. King v. King, 286 A. 2d 234 (D.C.C.A. 1972).

35. Hardy v. Hardy, 235 F. Supp. 208, 211 (D.D.C. 1964).

36. Lundegran v. Lundegran, supra, footnote 30.

37. Mazique v. Mazique, supra, footnote 30.

38. Gherardi de Parata v. Gerardi de Parata, 200 A. 2d 191 (D.C.C.A. 1964), rehearing denied, ibid.

39. Sirianni v. Sirianni, 338 A. 2d 101, 103 (D.C.C.A. 1975).

40. Pearsall v. Pearsall, 197 A. 2d 269 (D.C.C.A. 1964). Adulterous wife denied amount of her financial contribution to the purchase of the property.

41. Neuman v. Neuman, (D.C. Civil No. D-1582-74, 1975). On appeal by wife, case argued January 5, 1977, in D.C. Court of Appeals berore three-judge panel; opinion not yet rendered, D.C. Court of Appeals No. 9604).

42. Davis v. Davis, 268 A. 2d 515 (D.C.C.A. 1970).

43. DeWitt v. DeWitt, 201 A. 2d 527 (D.C.C.A. 1964).

44. Wood v. Wood, 309 A. 2d 103 (D.C.C.A. 1973). (60-year-old woman, married 33 years and unable to work full-time because of ill-health, had expenses of $708 a month and a personal monthly income of $709. The husband had a salary of $33,000 a year, with a guaranteed annual retirement income of $23,000. His net income was $1,500 a month, and his expenses were about $1,250 a month. The trial court awarded $210 a month alimony to the wife, giving her $211 per month above her expenses and leaving the husband $1,290 a month for himself. Although the trial record had no mention of the fact that Mrs. Wood required any amount for her support, the appeals court thought that there was evidence on which an award of permanent alimony could be sustained, but did not know what was actually considered in making the award. Accordingly it remanded the case to the trial court for a more detailed statement of its reasons for awarding alimony.

45. Robinson v. Robinson, 264 A. 2d 305 (D.C.C.A. 1970)

46. Cefaratti v. Cefaratti, 315 A. 2d 142 (D.C.C.A. 1974).

47. Bradt v. Bradt, 300 A. 2d 445 (D.C.C.A. 1973).

48. Miller v. Miller, 180 A. 2d 888 (D.C. Mun. App. 1962).

49. Jones v. Jones, 262 A. 2d 601 (D.C.C.A. 1970).

50. McEachnie v. McEachnie, 216 A. 2d 169 (D.C.C.A. 1966).

51. Ibid.

52. Grasty v. Grasty, 302 A. 2d 218 (D.C.C.A. 1973).

53. Crain v. Crain, 209 A. 2d 257 (D.C.C.A. 1965).

54. D.C. Ann. § 16-911(1) (1973).

55. Mozick v. Mozick, 245 A. 2d 643 (D.C.C.A. 1968).

56. D.C. Code Ann. § 16-911, § 30-301 (1973) et seq.

57. See Appendix.

58. D.C. Code § 16-911(4) (as amended).

59. D.C. Code § 16-911(5) (as amended).

60. D.C. Code § 19-114 (1973).

61. Windsor v. Leonard, 475 F. 2d 932, 154 U.S. App. D.C. 348 (D.C. Cir. 1973). Assets placed in trust by wife for various friends and charities properly excluded from her net estate of which surviving husband, renouncing his rights under her will, elected to take one-half.

62. D.C. Code § 19-113 (1973).

63. Cahill v. Eberly, 38 F. 2d 539, 59 App. D.C. 228 (D.C. Cir. 1930).

64. In re Osborn's Estate, 99 Kan. 227, 161 P. 601 (1916); Dick v. Taylor, 124 Kan. 646, 261 P. 579 1927.

65. In re Hoye's Estate, 158 Minn. 402, 197 N.W. 852 (1924); O'Brien v. Knotts, 165 Ind. 308, 75 N.E. 594 (1905); Hodgkins v. Ashby, 56 Colo. 553, 139, P. 538, (1914); Egger v. Egger, 225 Mo. 116, 123 S.W. 928 (1909).

66. Mead v. Phillips, 135 F. 2d 819, 826, 77 U.S. App. D.C. 365, 372 (D.C. Cir. 1943).

67. D.C. Code § 19-302 (1973).

68. D.C. Code § 19-304 (1973).

69. D.C. Code § 19-303 (1973).

70. D.C. Code § 19-301 (1973).

71. D.C. Code § 19-102 (1973).

72. D.C. Code § 19-103 (1973).

73. Devlin v. Esher, 280 F. 1004, 52 App. D.C. 30 (D.C. Cir. 1922).

74. Id. at 31, 1005.

75. D.C. Code § 19-113 (1973).

76. D.C. Code § 19-101 (1973).

77. D.C. Code § 19-102 (1973).

78 For further information on pensions and social security write for these publications: U.S. Department of Labor, Labor Management Services Administration, Often-Asked Questions About the Employment Retirement Income Security Act of 1974, Washington, D.C. 20216; U.S. Department of Health, Education, and Welfare, Social Security Administration, A woman's guide to social security, DHEW Publication No. (SSA) 75-10127, June 1975, Washington, D.C. 20201.

79. P.L. 93-406, Employees Retirement Income Security Act, Section 205(d).

80. Internal Revenue Service, Regulation in Joint and Survivor Annuities, issued January 7, 1977, in the Federal Register, Vol. 42, 1105, pp. 1463-1469, Section 1. 401(a)-11(d)(3)(i)(ii)(iii).

RECOMMENDATIONS OF THE HOMEMAKER COMMITTEE*
(All Adopted by the Commission)

REFORMING ESTATE, INHERITANCE, AND GIFT TAX LAWS**

The IWY Commission recommends that the provisions of the Internal Revenue Code relating to estate and gift taxes be amended to eliminate taxation on all transfers of property between husband and wife at death, and on all gifts between husband and wife during their lifetimes.

The Commission further recommends that State legislatures amend their tax laws to eliminate laws that provide for inheritance or gift taxes in transfers between husband and wife.

COVERAGE OF HOMEMAKERS UNDER SOCIAL SECURITY

The IWY Commission recommends that the homemaker be covered in her own right under Social Security to provide income security for the risks of old age, disability, and death. The Commission further recommends that the Secretary of Health, Education, and Welfare be directed to give a high priority to developing an administration proposal for achieving this purpose.

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*Copies of the recommendations with supporting position papers are included in the report of the Commission "...To Form a More Perfect Union..." Justice for American Women available from the Government Printing Office, Washington, D.C. 20401.

**The Secretary of the Treasury recommended abolition of these taxes in transfers between spouses to the Ways and Means Committee of the U.S. House of Representatives in testimony of March 22, 1976.

INHERITANCE RIGHTS OF SPOUSES

The IWY Commission recommends that State inheritance laws on disposition of property when a person dies without a will (intestate) be amended to provide that the surviving spouse's share is:

(1) if there is no surviving child or parent of the person who dies, the entire estate;

(2) if there are surviving children all of whom are children of the surviving spouse also, the entire estate;

(3) if there are surviving children one or more of whom are not children of the surviving spouse, one-half of the estate.

The Commission recommends further that State Bar Associations, especially women members, and the National Conference of Commissioners on Uniform State Laws in order to provide greater considerations of equity review and redraft (a) the provisions when there are no surviving children but there are surviving parents, and (b) the provisions for a "forced share", or "widows election".

ECONOMIC PROVISIONS OF DIVORCE LAWS

The IWY Commission urgently recommends that State, county, and city commissions on the status of women, and other organizations concerned with the welfare of children and dependent spouses, actively seek amendments in State divorce laws where necessary to assure that as a minimum the economic protections of the Uniform Marriage and Divorce Act* for dependent spouses and children are included.

*National Conference of Commissioners on Uniform State Laws, Uniform Marriage and Divorce Act (1970 version and 1974 version). Order from National Conference of Commissioners on Uniform State Laws, 1155 East Sixtieth Street, Chicago, Illinois 60637.

The Commission further recommends that State legislatures review and revise their divorce laws, adopting as a minimum the economic protections of the Uniform Marriage and Divorce Act.

The Commission recommends also that in addition to the protections of the Uniform Marriage and Divorce Act the following additional items be seriously reviewed and considered: (a) an effective provisio requiring disclosure of assets, such as that in the New York law (Section 250 of the Domestic Relations Law effective September 1, 1975); (b) authorization of child support until age 26 for children who are attending school; (c) the property divisions provisions that were in the 1970 version of the Uniform Marriage and Divorce Act; (d) specific mention of loss of pension rights as a factor to be considered in distribution of property; and (e) inclusion of a statement of intent such as that in Assembly Bill 995 introduced in the Wisconsin Assembly in 1975.

The statement of intent reads as follows:

> It is the intent of the legislature that a spouse who has been handicapped socially or economically by his or her contributions to a marriage shall be compensated for such contributions at the termination of the marriage, insofar as this is possible, and may be reeducated where necessary to permit the spouse to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. It is further the intent of the legislature that the standard of living of any minor children of the parties be maintained at a reasonable level, so that insofar as is possible, the children will not suffer economic hardship.

DISPLACED HOMEMAKERS BILL

The IWY Commission recommends that the Administration endorse H.R. 10272, known as the "Equal Opportunity for

Displaced Homemakers Act," which provides for establishing multi-purpose service programs for displaced homemakers to help them through a readjustment period so as to become self-sufficient members of society.

GOVERNMENT COLLECTION OF DATA ON DIVORCE, ALIMONY, PROPERTY DIVISION, CHILD CUSTODY, AND CHILD SUPPORT

The IWY Commission strongly urges that the 1976 Survey of Income and Education* which is to be conducted by the Census Bureau include questions which will provide answers to the following:

- How are children of divorced parents being supported, i.e., what proportion of the support is being contributed by each parent and by the Government as welfare?
- In what proportion of divorces is alimony awarded and in what amount?
- In what proportion of cases is child support awarded and in what amount?
- How is property divided?
- To what extent are alimony and child support awards being collected?
- To what extent are fathers getting custody of children? Are mothers paying child support in such cases?

*Through the cooperation and interest of the Department of Health, Education, and Welfare, some of the information requested will be collected in the 1976 Survey of Income and Education. The Department hopes to find collection of the additional data requested plus other information on single parent families.

- What are the relative economic situations, after divorce, of the spouse with custody of children and the other spouse?

- What is the economic status of women who are divorced after many years of homemaking and little labor force experience?

The Commission further recommends that such data be secured in each decennial census.

STATE HELP IN COLLECTING CHILD SUPPORT PAYMENTS FOR FAMILIES NOT ON WELFARE

The IWY Commission recommends that Sec. 455(2) of Public Law 94-88, which requires the termination on June 30, 1976 of Federal support to administrative costs for child support collection services for non-AFDC mothers, be amended to eliminate the deadline.

USEFUL PUBLICATIONS

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2. Bingaman, Anne K., "The Impact of an ERA on the Financial Rights of Married Women: An Overview," November 1975 issue of Pepperdine Law Journal, in press.

3. Citizens' Advisory Council on the Status of Women, "The Equal Rights Amendment and Alimony and Child Support Laws," and "Recognition of Economic Contribution of Homemakers and Protection of Children in Divorce Laws and Practice." Single copies free from Council, Room S3306, U.S. Dept. of Labor Building, Washington, D.C. 20210. Tel: (202) 523-6538.

4. Conlin, Roxanne, Equal Protection Versus the Equal Rights Amendment--Where Are We Now, 24 Drake Law Review, 259 at p. 289.

5. Cooey, Edward W., "The Exercise of Judicial Discretion in the Award of Alimony," VI Law and Contemporary Problems, 213, Spring 1939.

6. Foster, Henry H., Jr., and Freed, Doris Jonas, "Law and the Family," New York Law Journal, October 26, 1973, p. 1.

7. Freed, Doris Jonas and Foster, Henry H., Jr., Economic Effects of Divorce," VII Family Law Quarterly 275, Fall 1973. Order from American Bar Association, 1155 East Sixtieth Street, Chicago, Illinois 60637. $3.00.

8. General Accounting Office, New Child Support Legislation - Its Potential Impact and How to Improve It, Report to the Congress by the Comptroller General of the United States, B-164031(3), April 1976, Washington, D.C. Available from your Congressman or Senator.

9. Goode, William J., Women in Divorce, The Free Press, 877 Third Ave., New York 10022, 2nd Printing 1969, $3.50.

10. Hopson, Dan,"The Economics of Divorce: A Pilot Empirical Study at the Trial Court Level," 11 Kansas Law Review 107, 1962.

11. Kay, Herma Hill, "Making Marriage and Divorce Safe for Women: 60 California Law Review 1657, 1972. Order from Fred B. Rothman and Co., 57 Leuning Street, South Hackensack, New Jersey 07606, $3.50.

12. Krauskopf, Joan M. and Thomas, Rhonda C., "Partnership Marriage: The Solution To An Ineffective and Inequitable Law of Support," 35 Ohio State Law Journal, 558 (1974). Order from Ohio State Law Journal, 1659 N. High Street, Columbus, Ohio 43210, $3.00. Tel: (614) 422-6829.

13. Marriage, Divorce, and Family Newsletter, Betty Berry, editor, P.O. Box 42, Madison Square Station, New York, New York, 10010. Subscriptions $7.70 for individuals, $12.00 for organizations, and $10.00 for overseas subscribers.

14. Nagel, Stuart S. and Weitzman, Lenore J., "Women as Litigants," 23 Hastings Law Journal, 171, November 1971.

15. National Commission on the Observance of International Women's Year, Recommendations of the Homemaker Committee on divorce, inheritance and estate tax, probate law, and social security coverage of the homemaker. Secretariat for International Women's Year, D/IWY, Room 1004, Department of State Building, Washington, D.C. 20520. Tel: (202) 632-8888.

16. National Conference of Commissioners on Uniform State Laws, "Uniform Marriage and Divorce Act" (1970 version and as amended in 1974) and "Uniform Probate Law." Order from National Conference of Commissioners on Uniform State Laws, 645 N. Michigan Avenue, Chicago, Illinois, 60611, $1.00 each.

17. National Council on Family Relations, Journal of Marriage and the Family, Vol. 33, No. 4, November 1971. Special Issue on "Violence and the Family," 1219 University Avenue, S.E., Minneapolis, Minnesota 55414, $3.50.

18. Riederer, Henry A., "Marriage Dissolution Trends: An Analysis of a Missouri Bar Survey," IV Family Law Quarterly, 184, January 1970.

19. Ross, Susan C., "The Rights of Women," An American Civil Liberties Union Handbook, Discus Books, $1.25.

20. Rutman, Laurence D., "Departure From Fault," 1 Journal of Family Law, 181 (1961).

21. Sassower, Doris, "Matrimonial Law Reform: Equal Property Rights for Women," Testimony before the Joint Matrimonial Committees, N.Y. City Bar Association and the N.Y. County Lawyers Association, January 14, 1972, in 44 N.Y. State Bar Journal 406 (1972).

22. Walker, Kathryn E. and Gauger, William, The Dollar Value of Household Work, 1973, 25¢. Order from Communication Arts, 170D - MVR, N.Y.S. College of Human Ecology, Cornell University, Ithaca, New York 14850.

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* U.S. GOVERNMENT PRINTING OFFICE : 1977 O-729-725/1442

NATIONAL COMMISSION ON THE OBSERVANCE OF
INTERNATIONAL WOMEN'S YEAR
Department of State
Washington, D. C. 20520

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Former U.S. Congresswoman, NY; Founder and Former Chair,
National Women's Political Caucus; Congressional Advisor
to the U.S. Delegation to the UN World Conference on
IWY in Mexico City, 1975

Ruth J. Abram, Executive Director,
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Maya Angelou, Author, Poet, Playwright,
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Elizabeth Athanasakos, Attorney
Former Presiding Officer, IWY Commission

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Editor-in-Chief, Good Housekeeping

Sey Chassler
Editor-in-Chief, Redbook Magazine

Ruth C. Clusen, President,
League of Women Voters of the U.S.

Audrey Rowe Colom, Director of Women's
Activities, Corp. of Public Broadcasting

Jane Culbreth, President, National Federation
of Business and Professional Women's Clubs

Harry T. Edwards, Professor of Law,
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American Association of University Women

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California Secretary of State

Betty Ford
Former First Lady of the U.S.

Bernice S. Frieder, Former National Officer,
National Council of Jewish Women

Martha Griffiths, Attorney
Member of Congress, 1955-1975

Dorothy Haener, International
Representative, Women's Department, UAW

Rhea Mojica Hammer, National V-Chair,
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U.S. Advisory Committee, Spanish Origin
Population, 1980 Census

LaDonna Harris, President,
Americans for Indian Opportunity

Lenore Hershey
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Women

Mildred Jeffrey, Chair, Democratic
Women's Task Force, NWPC

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Jeffalyn Johnson, Professor, Former Federal Executive, Mgmt. Consultant

Coretta Scott King, Founder, Martin Luther King, Jr. Memorial Center, Atlanta

Mary Anne Krupsak, Lieutenant Governor, State of New York

Margaret J. Mealey, Executive Director, National Council of Catholic Women

Jean O'Leary, Co-Executive Director, National Gay Task Force

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Connie Plunkett, Member, Democratic National Committee

Ersa Poston, Commissioner and Past President, NY Civil Service Commission

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Gloria Scott, National President, Girl Scouts of America

Eleanor Smeal, Chair of the Board, National Organization for Women

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